

1 **(April 3, 2006)**

2 ***Disadvantaged Business Enterprise Participation***

3 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR part 26 apply  
4 to this contract. The requirements of this contract are to encourage DBE participation,  
5 supply a bidder's list, and to report race neutral accomplishments quarterly as  
6 described in this special provision. No preference will be included in the evaluation of  
7 bids/proposals, no minimum level of DBE participation shall be required as a condition  
8 for receiving an award and bids/proposals will not be rejected or considered non-  
9 responsive on that basis.

10  
11 **DBE Goals**

12 No DBE goals have been assigned as a part of this contract.

13  
14 **Affirmative Efforts to Solicit DBE Participation**

15 DBE firms shall have equal opportunity to compete for and perform subcontracts  
16 which the Contractor enters into pursuant to this contract. Contractors are  
17 encouraged to:

- 18  
19 1. Advertise opportunities for Subcontractors or suppliers in a manner  
20 reasonably designed to provide DBEs capable of performing the work with  
21 timely notice of such opportunities. All advertisements should include a  
22 provision encouraging participation by DBE firms and may be done  
23 through general advertisements (e.g. newspapers, journals, etc.) or by  
24 soliciting bids/proposals directly from DBEs.  
25  
26 2. Utilize the services of available minority community-based organizations,  
27 minority contractor groups, local minority assistance offices and  
28 organizations that provide assistance in the recruitment and placement of  
29 DBEs and other small businesses.

30  
31 In addition, the Office of Minority and Women's Business Enterprises has  
32 two DBE Supportive Services Offices available to assist you as follows:

33  
34 Seattle: (206) 553-7356  
35 Tacoma: (253) 680-7393  
36

- 37 3. Establish delivery schedules, where requirements of the contract allow,  
38 that encourage participation by DBEs and other small businesses.  
39  
40 4. Achieve attainment through joint ventures.

41  
42 In the absence of a mandatory goal, all DBE participation that is attained on this  
43 project will be considered as "race neutral" participation and will be reported as  
44 such.

45  
46 **DBE Eligibility (for reporting purposes only)**

47 **Selection of DBEs:**

48 DBEs utilized on the contract will be eligible to be counted as race neutral  
49 participation only if the firm is identified as a DBE on the current list of firms  
50 certified by the Office of Minority and Women's Business Enterprises  
51 (OMWBE), the DBE firm is certified in the corresponding NAICS code(s) for

1 the type of work to be performed, and the DBE firm performs a commercially  
2 useful function. A list of firms certified by OMWBE, including the NAICS codes  
3 for which they are certified, is available from that office and on line through  
4 their website ([www.omwbe.wa.gov/directory/directory.htm](http://www.omwbe.wa.gov/directory/directory.htm)) or by telephone at  
5 (360) 704-1181.  
6

### 7 **Counting DBE Participation For Reporting Race Neutral Accomplishments**

8 When a DBE firm participates in a contract, only the value of the work actually  
9 performed by the DBE will be counted as race-neutral participation.  
10

- 11 1. Count the entire amount of the portion of the contract that is performed by  
12 the DBE's own forces. Include the cost of supplies and materials  
13 obtained by the DBE for the work of the contract, including supplies  
14 purchased or equipment leased by the DBE (except supplies, materials,  
15 and equipment the DBE Subcontractor purchases or leases from the  
16 Prime Contractor or its affiliate, unless the Prime Contractor is also a  
17 DBE). Work performed by a DBE, utilizing resources of the Prime  
18 Contractor or its affiliates will not be counted as race-neutral participation.  
19 In very rare situations, a DBE firm may utilize equipment and/or personnel  
20 from a non-DBE firm other than the Prime Contractor or its affiliates.  
21 Should this situation arise, the arrangement must be short-term and have  
22 prior written approval from the Contracting Agency. The arrangement  
23 must not erode a DBE firm's ability to perform a Commercially Useful  
24 Function (See discussion of CUF, below).  
25
- 26 2. Count the entire amount of fees or commissions charged by a DBE  
27 firm for providing a bona fide service, such as professional, technical,  
28 consultant, or managerial services, or for providing bonds or  
29 insurance.  
30
- 31 3. When a DBE subcontracts part of the work of its contract to another  
32 firm, the value of the subcontracted work may be counted as race  
33 neutral participation only if the DBE's lower tier Subcontractor is also  
34 a DBE. Work that a DBE Subcontracts to a non-DBE firm does not  
35 count as race neutral participation.  
36
- 37 4. When a non-DBE subcontractor further subcontracts to a lower-tier  
38 subcontractor or supplier who is a certified DBE, then that portion of  
39 the work further subcontracted may be counted toward the DBE goal,  
40 so long as it is a distinct clearly defined portion of the work of the  
41 subcontract that the DBE is performing with its own forces in a  
42 commercially useful function.  
43

### 44 **DBE Prime Contractor**

45 A DBE prime Contractor may only count the work performed with its own forces  
46 and the work performed by DBE Subcontractors and DBE suppliers.  
47

### 48 **Joint Venture**

49 When a DBE performs as a participant in a joint venture, only that portion of the  
50 total dollar value of the contract equal to the distinct, clearly defined portion of the  
51 work that the DBE performs with its own forces will count as race neutral  
52 participation.

## **Commercially Useful Function**

Payments to a DBE firm will count as race neutral participation only if the DBE is performing a commercially useful function on the contract.

1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (if applicable) and paying for the material itself. Two party checks are not allowed.
2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

## **Trucking**

Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is listed on a particular contract.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit only for the total value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs.
4. For purposes of this paragraph a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
5. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE may report race-neutral participation for the total value of the transportation services the lessee DBE provides on the contract.
6. The DBE may also lease trucks from a non-DBE firm and may enter an agreement with an owner-operator who is a non-DBE. The DBE who leases trucks from a non-DBE or employs a non-DBE owner-operator is entitled to count race-neutral participation only for the fee or commission it receives as a result of the lease arrangement. The DBE may not count

1 the total value of the transportation services provided by the lessee, since  
2 these services are not provided by a DBE.

3  
4 7. In any lease or owner-operator situation, as described in paragraphs 5 & 6  
5 above, the following rules shall apply:

- 6  
7
  - 8 • A written lease/rental agreement on all trucks leased or rented,  
9 showing the true ownership and the terms of the rental must be  
10 submitted and approved by the Contracting Agency prior to the  
11 beginning of the work. The agreement must show the lessor's  
12 name, trucks to be leased, and agreed upon amount or method  
13 of payment (hour, ton, or per load). All lease agreements shall  
14 be for a long-term relationship, rather than for the individual  
15 project. Does not apply to owner-operator arrangements.
  - 16 • Only the vehicle, (not the operator) is leased or rented. Does not  
17 apply to owner-operator arrangements.

18  
19 8. In order for payments to be counted as race-neutral participation, DBE  
20 trucking firms must be covered by a subcontract or a written agreement  
21 approved by WSDOT prior to performing their portion of the work.

22  
23 **Expenditures paid to other DBEs**

24 Expenditures paid to other DBEs for materials or supplies may be counted toward  
25 race neutral participation as provided in the following:

26  
27 **Manufacturer**

28 1. Counting

29 If the materials or supplies are obtained from a DBE manufacturer, count  
30 100 percent of the cost of the materials or supplies toward race neutral  
31 participation.

32  
33 2. Definition

34 To be a manufacturer, the firm operates or maintains a factory or  
35 establishment that produces, on the premises, the materials, supplies,  
36 articles, or equipment required under the contract and of the general  
37 character described by the specifications.

38  
39 3. In order to receive credit as a DBE manufacturer, the firm must have  
40 received an "on-site" review and been approved by WSDOT-OEO to  
41 operate as a DBE Manufacturing firm. To schedule a review, the  
42 manufacturing firm must submit a written request to WSDOT/OEO and  
43 may not receive race neutral credit, until the completion of the review.  
44 Once a firm's manufacturing process has been approved in writing, it is  
45 not necessary to resubmit the firm for approval unless the manufacturing  
46 process has substantially changed. Information on approved  
47 manufacturers may be obtained from WSDOT-OEO.

48  
49 **Regular Dealer**

50 1. Counting

1 If the materials or supplies are purchased from a DBE regular dealer, 60  
2 percent of the cost of the materials or supplies will count toward race  
3 neutral participation.  
4

5 2. Definition

6 a) To be a regular dealer, the firm must own, operate or maintain a  
7 store, warehouse, or other establishment in which the materials,  
8 supplies, articles or equipment of the general character described by  
9 the specifications and required under the contract are bought, kept in  
10 stock, and regularly sold or leased to the public in the usual course of  
11 business. It must also be an established, regular business that  
12 engages, as its principal business and under its own name, in the  
13 purchase and sale or lease of the products in question.  
14

15 b) A person may be a regular dealer in such bulk items as petroleum  
16 products, steel, cement, gravel, stone, or asphalt without owning,  
17 operating, or maintaining a place of business, as provided elsewhere  
18 in this specification, if the person both owns and operates distribution  
19 equipment for the products. Any supplementing of regular dealers'  
20 own distribution equipment shall be by a long-term lease agreement  
21 and not on an ad hoc or contract-by-contract basis.  
22

23 c) Packagers, brokers, manufacturers' representatives, or other persons  
24 who arrange or expedite transactions are not regular dealers.  
25

26 3. Regular dealer status is granted on a contract-by-contract basis. To  
27 obtain regular dealer status, a formal written request must be made by the  
28 interested supplier (potential regular dealer) to WSDOT/OEO. Included in  
29 the request shall be a full description of the project, type of business  
30 operated by the DBE, and the manner the DBE will operate as a regular  
31 dealer on the specific contract. Rules applicable to regular dealer status  
32 are contained in 49 CFR Part 26.55.e.2. Once the request is reviewed by  
33 WSDOT-OEO, the DBE supplier requesting it will be notified in writing  
34 whether regular dealer status was approved.  
35

36 **Materials or Supplies Purchased from a DBE**

37 With respect to materials or supplies purchased from a DBE who is neither a  
38 manufacturer nor a regular dealer, the entire amount of fees or commissions  
39 charged for assistance in the procurement of the materials and supplies or  
40 fees or transportation charges for the delivery of materials or supplies required  
41 on a job site may be counted as race neutral participation. No part of the cost  
42 of the materials and supplies themselves may be applied as race neutral  
43 participation.  
44

45 **Procedures Between Award and Execution**

46 After award of the contract, the successful bidder shall provide the additional  
47 information described below. A failure to comply shall result in the forfeiture of the  
48 bidder's proposal bond or deposit.  
49

50 A list of all firms who submitted a bid or quote in an attempt to participate in this  
51 project whether they were successful or not. Include the correct business name,  
52 federal employer identification number (optional) and a mailing address.

The firms identified by the Contractor may be contacted to solicit general information as follows:

1. age of the firm
2. average of its gross annual receipts over the past three-years

#### **Procedures After Execution**

##### **Reporting**

The Contractor shall submit a "Quarterly Report of Amounts Credited as DBE Participation" (actual payments) on a quarterly basis for any calendar quarter in which DBE work is accomplished or upon completion of the project, as appropriate. The quarterly reports are due on January 20<sup>th</sup>, April 20<sup>th</sup>, July 20<sup>th</sup>, and October 20<sup>th</sup> of each year. Or, the contractor has the option of submitting actual DBE payment data to the contracting agency on a monthly basis using the Construction Management and Tracking System (CMATS). Use of CMATS will become a requirement for all contractors effective January 7, 2008. The dollars reported will be in accordance with the "**Counting DBE Participation For Reporting Race Neutral Participation**" section of this specification.

In the event that the payments to a DBE have been made by an entity other than the Prime Contractor (as in the case of a lower-tier subcontractor or supplier), then the Prime Contractor shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to the Contracting Agency.

##### **Payment**

Compensation for all costs involved with complying with the conditions of this specification and any associated DBE requirements is included in payment for the associated contract items of work.